



Michael Bradley (“Bradley”) was convicted by a jury in Howard Superior Court of Class D felony possession of marijuana. He appeals, contending there is insufficient evidence to support his conviction. We affirm.

### **Facts and Procedural History**

On January 22, 2006, Officers Chad VanCamp and Luana Bills (“Officers VanCamp and Bills”) were conducting a drug interdiction. They went to a house located at 324 East Vaile in Kokomo. Officer Bills first observed the occupants of the residence through the front window. Bradley was sitting on the left end of a couch, a white male was sitting in the middle of the couch, and a white female, later identified as Brandi Bradley (“Brandi”), was sitting on the right end. Brandi is Bradley’s sister. When Officer Bills knocked on the door, she saw Bradley reach underneath the cushion he was sitting on. She believed he was concealing a weapon or some other object that he did not want her to see. Officer Bills also saw Brandi reach underneath the couch cushion she was sitting on.

When the officers entered the house, they immediately smelled burnt marijuana. They saw a brown smoking device, or a bong, at Bradley’s feet. The bong had been kicked over and was leaking fluid and emanating a pungent odor. Officer VanCamp also noticed loose plant material on the floor, which he recognized as marijuana.

Under the left couch cushion that Bradley had been sitting on, the officers found a clear plastic bag of marijuana. Under the right couch cushion that Brandi had been sitting on, the officers found a blue and silver smoking device. Brandi also had a Spree can in her possession that contained marijuana. The officers arrested both Bradley and Brandi.

The State charged Bradley with Class D felony possession of marijuana on January 24, 2006. A jury trial was conducted on June 26, 2006, and Bradley was convicted as charged. Bradley stipulated to his prior unrelated conviction for possession of marijuana, which had elevated the offense to a D felony. On December 20, 2006, the trial court sentenced Bradley to three years. Bradley now appeals the sufficiency of the evidence. Additional facts will be provided as necessary.

### **Discussion and Decision**

Bradley contends that the State failed to produce sufficient evidence of Bradley's actual or constructive possession of marijuana or evidence that Bradley's possession was knowing or intentional. In reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor assess the credibility of the witnesses. Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). We must respect the jury's exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). On review, we look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. Id. If substantial evidence of probative value would have allowed a reasonable jury to find the defendant guilty beyond a reasonable doubt, then we must affirm the jury's finding. Massey v. State, 816 N.E.2d 979, 989 (Ind. Ct. App. 2004) (citation omitted).

Indiana law provides that a person may be convicted for possession of marijuana if the person "(1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish" and that the offense is a Class D felony if the individual has a prior conviction of an offense involving marijuana, hash oil, or hashish. Ind. Code § 35-48-4-

11(1) (2004). Either actual or constructive possession can support a finding that a defendant possessed the controlled substance. Massey, 816 N.E.2d at 989. Constructive possession occurs when someone has “the intent and capability to maintain dominion and control over the item.” Henderson v. State, 715 N.E.2d 833, 835 (Ind. 1999).

As we have explained: In order to prove constructive possession, the State must show that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband. To prove the intent element, the State must demonstrate the defendant’s knowledge of the presence of the contraband, which may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband.

Massey, 816 N.E.2d at 989 (citation omitted). Additional circumstances that support finding that a defendant had the intent and capability to maintain dominion and control over contraband kept in non-exclusive premises include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. Ladd v. State, 710 N.E.2d 188, 190 (Ind. Ct. App. 1999).

Bradley claims that there was insufficient evidence to prove that he had constructive possession, or that his possession was knowing or intentional. We disagree. The bag of marijuana was found underneath Bradley’s person. Officer Bills testified that she saw Bradley reach underneath the couch cushion he was sitting upon to conceal something before the door was opened. On the other hand, Bradley points to Brandi’s

testimony that Bradley had not smoked marijuana with them and that the bag of marijuana belonged to her. Tr. p. 64.

The trier of fact is entitled to determine which version of the incident to credit. Reyburn v. State, 737 N.E.2d 1169, 1171 (Ind. Ct. App. 2000) (citation omitted). Bradley's claim amounts to a request to reweigh the evidence and credibility of the witnesses, which we will not do. Bradley's proximity to the marijuana in addition to the furtive movements that Officers Bills observed sufficiently support his conviction for possession of marijuana.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.